

1 Ramon Rossi Lopez – rlopez@lopezmchugh.com
2 (California Bar Number 86361; admitted *pro hac vice*)
Lopez McHugh LLP
3 100 Bayview Circle, Suite 5600
Newport Beach, California 92660
949-812-5771

4 Mark S. O'Connor (011029) – mark.oconnor@gknet.com
5 Gallagher & Kennedy, P.A.
2575 East Camelback Road
6 Phoenix, Arizona 85016-9225
602-530-8000

7 *Co-Lead/Liaison Counsel for Plaintiffs*

8
9 UNITED STATES DISTRICT COURT

10 DISTRICT OF ARIZONA

11 In Re Bard IVC Filters Products
12 Liability Litigation

No. MD-15-02641-PHX-DGC

13 SHERR-UNA BOOKER, an individual,

14 Plaintiff,

15 v.

16 C.R. BARD, INC., a New Jersey
17 corporation and BARD PERIPHERAL
VASCULAR, an Arizona corporation,

18 Defendants.

19
20 **PLAINTIFF'S MOTION IN LIMINE #12**
AND MEMORANDUM IN SUPPORT
TO EXCLUDE EVIDENCE OF DR.
KANG'S SOCIAL MEDIA POSTS

(The Honorable David G. Campbell)

(Oral Argument Requested)

21
22 **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION IN LIMINE TO**
EXCLUDE EVIDENCE OF DR. KANG'S SOCIAL MEDIA POSTS

23 Plaintiff moves *in limine* for an Order precluding evidence and argument related to:

- 24 (1) Dr. Brandon Kang's Twitter and Facebook accounts and use of the terms "lasso,"
cowboy," "GTFO" (Get The Filter Out), "#filterout," "#IRad," and the cowboy emoji; and
25 (2) comments, posts, photos, or videos that Dr. Kang posted on these accounts. None of
the posts, photos, videos, comments, emojis or hashtag terms are relevant to Plaintiff or
26 Dr. Kang's treatment of Plaintiff years earlier, and would be highly and unfairly
27 prejudicial to Plaintiff's case. Fed. R. Evid. 401, 402, 403.

1 Dr. Kang treated Plaintiff in July 2014, and he did not even join Twitter until
2 March 2017. *See Exhibit A, Deposition of Dr. Brandon Kang, July 15, 2017, 76:14-21.* It
3 is clear from defense counsel's questioning at Dr. Kang's deposition that Bard seeks to
4 introduce this evidence in an attempt to paint Dr. Kang as a reckless cowboy who lassos
5 filters and gets them out in a cavalier manner. *Id.* at 73-76; 111-112; 174-175. This
6 evidence is neither timely nor probative of his treatment of Plaintiff.
7

8 Dr. Kang testified that he joined Twitter and began using these hashtag terms and
9 the cowboy emoji after he attended a Society of Interventional Radiology meeting in
10 Washington D.C. in March of 2017. *Id.* at 76. Dr. Kang became aware, during the
11 meeting that many interventional radiologists were "tweeting" about cases and sharing
12 case experiences, and he decided it was a good way to become involved with other
13 interventional radiologists. *Id.* Dr. Kang did not personally come up with any of these
14 hashtag terms or the idea of using the cowboy emoji. *Id.* at 75-76. Dr. Kang used the
15 lighthearted cowboy emoji and the hashtag terms as a way to be included in the online
16 sharing and attention to work in the interventional radiology arena. *Id.* at 159-160. He
17 also referred to himself as a magician on Twitter when he used a microwave ablation to
18 make kidney tumors "disappear." *Id.* at 160. He called this procedure a "magic trick."
19 *Id.* Dr. Kang takes his career as an interventional radiologist seriously, and he testified
20 that he is not a cowboy or a magician, he is an interventional radiologist. *Id.* There is no
21 evidence that Dr. Kang posted any "tweets" about Plaintiff's case or condition, and he did
22 not join Twitter until years after he treated her.
23
24
25
26
27
28

1 Evidence of Dr. Kang's post-treatment Twitter and Facebook posts is irrelevant to
2 his care and treatment of Plaintiff, and admitting such evidence would be highly
3 prejudicial and misleading to the jury. Fed. R. Evid. 401, 402, 403. The implication—
4 based on events occurring and information gained three years after Dr. Kang last treated
5 Plaintiff—would be that Dr. Kang is reckless and acted irresponsibly in attempting to
6 retrieve the filter piece from Plaintiff's right ventricle. In reality, the evidence in this case
7 is quite the opposite. Dr. Kang conferred with a cardiothoracic surgeon before deciding to
8 attempt the removal of the filter piece from Plaintiff's right ventricle. *Id.* at 22-23. The
9 surgeon and Dr. Kang, in consultation with Plaintiff, were in agreement that the
10 percutaneous removal attempt was in the best interest of the patient. *Id.* Dr. Kang arranged
11 for a cardiothoracic surgeon to be on standby while he was attempting the removal in case
12 a cardio problem arose. *Id.* at 43. Dr. Kang stopped the attempted removal when it became
13 clear that it was problematic to continue. *Id.* at 41-42. No physician or expert has
14 expressed any opinion in this matter that Dr. Kang's treatment of Plaintiff was outside the
15 standard of care. In fact, Bard's own expert, Dr. Sobieszczyk, testified that he was not
16 expressing any opinion that Dr. Kang breached the standard of care in his treatment of
17 Plaintiff. See Exhibit B, Deposition Testimony of Piotr Sobieszczyk, M.D., 45:6-46:18;
18 111:3-16.

23 Based on the foregoing, Plaintiff requests the Court enter an Order granting
24 Plaintiff's motion and excluding evidence of Dr. Kang's social media posts under Federal
25 Rules of Evidence 401, 402 and 403.
26
27
28

1 RESPECTFULLY SUBMITTED this 26th day of January, 2018.

2 GALLAGHER & KENNEDY, P.A.

3 By: /s/ Mark S. O'Connor

4 Mark S. O'Connor

5 2575 East Camelback Road

Phoenix, Arizona 85016-9225

6 LOPEZ McHUGH LLP

7 Ramon Rossi Lopez (CA Bar No. 86361)

(admitted *pro hac vice*)

8 100 Bayview Circle, Suite 5600

Newport Beach, California 92660

9 *Co-Lead/Liaison Counsel for Plaintiffs*

10

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on this 26th day of January, 2018, I electronically transmitted
13 the attached document to the Clerk's Office using the CM/ECF System for filing and
14 transmittal of a Notice of Electronic Filing.

15 /s/ Gay Mennuti

16

17

18

19

20

21

22

23

24

25

26

27

28